



One Tower Square
Mail Drop - S202A
Hartford, CT 06183

James Vardion
Technical Director & Counsel
Bond & Specialty Insurance Claim
Phone: (860) 277-3381
Fax: (888) 201-5587
Email: JVARDION@travelers.com

July 8, 2021

Jim Brigman (Via e-mail only: jbrigman@ingenero.com)
Ingenero Bermuda c/o Ingenero Inc.
4615 Southwest Frwy
Suite 320
HOUSTON, TX 77027

Re: Insured: Ingenero Bermuda c/o Ingenero Inc.
File No. 080-MPL-T2108663-NR
Policy No. 001-LB-105614056
Matter: In Re: TPC Group Litigation; In the District Court of Orange County,
Texas, 128th Judicial District; Cause No. A2020-0236-MDL

Dear Mr. Brigman:

The purpose of this letter is to provide you with a preliminary evaluation of the coverage that Travelers Casualty and Surety Company of America ("Travelers" or "Company") will afford its Insured in this matter under the captioned Wrap+ Policy ("Policy").

Please note, however, that a definitive coverage evaluation may not be possible until all issues raised in this matter have been resolved. Note, too, that many of the capitalized terms in this letter are expressly defined in the Policy. Kindly refer to your copy of the Policy to familiarize yourself with those definitions and the Policy in general.

The Policy

Travelers issued the Policy to Ingenero Bermuda c/o Ingenero Inc. ("Ingenero") for the Policy Period 7/11/2020 to 7/11/2021. The relevant Insuring Agreement in the Miscellaneous Professional Liability coverage part ("MPL Coverage Part") provides as follows:

The Company will pay on behalf of the Insured, Loss for any Claim first made during the Policy Period, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period for a Wrongful Act.¹

¹ The Policy also contains a Private Company Directors and Officers Liability coverage part ("D&O Coverage Part"), however, coverage for this matter is precluded under the D&O Coverage Part pursuant to the following endorsement:

PROFESSIONAL E&O EXCLUSION ENDORSEMENT

This endorsement modifies the following:

Private Company Directors and Officers Liability, Employment Practices Liability

It is agreed that:

***** Our toll-free number is 800-842-8496 *****
If possible, please send future communications and documents concerning this claim via email to JVARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).

Travelers

July 8, 2021

Page 2

The Company's Limit of Liability under the MPL Coverage Part, inclusive of Defense Expenses, is \$3,000,000.00 for all Claims. Note further that the MPL Coverage Part specifies a \$75,000.00 Retention, which applies to Loss, including Defense Expenses. The Policy provides the following in relevant part regarding the Retention:

RETENTION

The Insured shall bear uninsured at its own risk the amount of any applicable Retention, which amount must be paid in satisfaction of Loss.

If any Claim gives rise to coverage under a single Liability Coverage, the Company has no obligation to pay Loss, including Defense Expenses, until the applicable Retention amount set forth in ITEM 5 of the Declarations has been paid by the Insured. (emphasis added)

Therefore, Ingenero, uninsured at its own risk, is responsible for the first \$75,000.00 of Loss, including Defense Expenses.

The Claim

This preliminary coverage evaluation is based on information provided to Travelers to date including the Second Amended Master Consolidated Petition and Jury demand filed on 5/3/2021 with respect to the above-referenced litigation ("Second Amended Master Petition"). The Second Amended Master Petition identifies unspecified Plaintiffs and numerous Defendants including Ingenero, and arises out of two alleged explosions which occurred on 11/27/19 at a TPC Group, Inc./TPC Group, LLC ("TPC") plant in Port Neches, Jefferson County, Texas which allegedly causes personal injuries, bodily injuries, property damage, toxic and/or chemical releases and exposures, and a litany of other injuries and damages. The Second Amended Master Petition alleges that preliminary tests revealed that the explosions and subsequent activity released 1,3-butadiene, benzene and other harmful substances into the air, water, and on nearby properties. The Second Amended Master Petition also alleges that TPC hired Ingenero to provide engineering services to oversee butadiene production at TPC's Port Neches plant, and that Ingenero knew or should have known that there was an active polymer infection at the plant's butadiene finishing

The following is added to EXCLUSIONS APPLICABLE TO ALL LOSS:

The Company will not be liable for Loss for any Claim based upon or arising out of any Wrongful Act related to the rendering of, or failure to render, professional services.

The endorsement applies to preclude coverage because the Second Amended Master Petition is based upon and arises out of Wrongful Acts related to the rendering of, or failure to render, professional services. In this regard, Travelers has also reviewed a Master Professional Services Agreement Between TPC Group, LLC and Ingenero effective as of October 1, 2016.

While the above-referenced endorsement precludes coverage for this matter in its entirety under the D&O Coverage Part, other exclusions in the D&O Coverage Part also apply to precluded coverage, at least in part, including but not limited to exclusions A.1., A.2. and A.3. Travelers reserves its rights with respect to these exclusions, and all provisions of the D&O Coverage Part.

***** Our toll-free number is 800-842-8496 *****

If possible, please send future communications and documents concerning this claim via email to JWARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).

Travelers

July 8, 2021

Page 3

section, yet failed to recommend an immediate shutdown of the plant. The Second Amended Master Petition asserts the following causes of action against Ingenero:

Count IV) Negligent, Grossly Negligent, and Intentional Trespass of TPC

Count V) Nuisance

Count IX) Negligence/Gross Negligence

Count X) Negligent Misrepresentation and Failure to Warn

The Second Amended Master Petition seeks relief including actual, consequential and compensatory damages (for personal injuries, physical damages to structures and personal property, real property stigma damages, lost business profits and out-of-pocket evacuation expenses) and punitive damages.

Defense Arrangement

The Second Amended Master Petition constitutes a Claim under the Policy. Accordingly, Travelers agrees to defend Ingenero in this matter, subject to rights it reserves under the Policy. Travelers understands that Liberty Mutual, Ingenero's commercial general liability insurance carrier, is also affording a defense to Ingenero, and has retained Sheehy Ware to represent Ingenero.

The Policy defines Defense Expenses as follows:

Defense Expenses means reasonable and necessary legal fees and expenses incurred by the Company or the Insured, with the Company's consent, in the investigation, defense, settlement and appeal of a Claim, including but not limited to, cost of expert consultants and witnesses, premiums for appeal, injunction, attachment or supersedeas bonds (without the obligation to furnish such bonds) regarding such Claim; provided, that Defense Expenses will not include the salaries, wages, benefits or overhead of, or paid to, any Insured or any employee of such Insured.

Travelers reserves the right to deny coverage for any fees, costs or expenses which do not constitute Defense Expenses as defined by the Policy.

Coverage Analysis

Travelers will afford coverage for this Claim subject to the express terms and conditions of the Policy and reserves its rights under the Policy as set forth in this letter.

As noted above, the applicable Insuring Agreement is triggered by a Claim for a Wrongful Act. The MPL Coverage Part defines Wrongful Act in relevant part as follows (as amended by endorsement MPL-7112 Ed. 01-09):

Wrongful Act means any:

1. actual or alleged act, error, omission, misstatement, misleading statement, or breach of duty or neglect by or on behalf of, or any matter asserted against, an Insured in the rendering of or failure to render Professional Services; or

The MPL Coverage Part defines Professional Services as follows:

***** Our toll-free number is 800-842-8496 *****

If possible, please send future communications and documents concerning this claim via email to JWARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).

Travelers

July 8, 2021

Page 4

Professional Services means only those services performed for others set forth in ITEM 5 of the Declarations.

ITEM 5 of the Declarations identifies the Professional Services as “Business operations and workflow consulting including simulation and modeling services.”

Travelers reserves the right to deny coverage for any loss or damages which are not the result of a Claim for a Wrongful Act.

The MPL Coverage Part defines Loss as follows:

I. Loss means Defense Expenses and money which an Insured is legally obligated to pay as a result of a Claim, including settlements, judgments, compensatory damages, punitive or exemplary damages if insurable under the applicable law most favorable to the insurability of punitive or exemplary damages, prejudgment and postjudgment interest, and legal fees and expenses awarded pursuant to a court order or judgment. Loss does not include:

1. civil or criminal fines, sanctions, liquidated damages, payroll or other taxes, penalties, the multiplied portion of any multiplied damage award, any return, withdrawal, restitution or reduction of professional fees, profits, or other charges, or damages or types of relief deemed uninsurable under applicable law;
2. amounts that constitute the cost of complying with any order for, grant of, or agreement to provide, injunctive or non-monetary relief; or
3. any amount allocated to non-covered loss pursuant to section III. CONDITIONS. P. ALLOCATION of the Liability Coverage Terms and Conditions.

Travelers reserves the right to deny coverage for any damages which do not constitute Loss as defined by the Policy.

The MPL Coverage Part also contains the following relevant exclusions:

III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

1. The Company will not be liable for Loss for any Claim for any damage to, destruction of, loss of, or loss of use of, any tangible property including damage to, destruction of, loss of, or loss of use of, tangible property that results from inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot.
2. The Company will not be liable for Loss for any Claim for any bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, humiliation, or loss of reputation of any person.
3. The Company will not be liable for Loss for any Claim:
 - a. based upon or arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of any Pollutant²;

² The Policy defines Pollutant as follows:

***** Our toll-free number is 800-842-8496 *****

If possible, please send future communications and documents concerning this claim via email to JWARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).

Travelers

July 8, 2021

Page 5

- b. based upon or arising out of any request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any Pollutant; or
 - c. brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of, any Pollutant.
14. The Company will not be liable for Loss for any Claim based upon or arising out of the liability of others assumed by an Insured under any contract or agreement, whether oral or written, except to the extent that the Insured would have been liable in the absence of such contract or agreement.
15. The Company will not be liable for Loss for any Claim based upon or arising out of any Personal Injury³; provided that this exclusion does not apply to any Claim for invasion, infringement, or interference with the rights of privacy with respect to any Network and Information Security Offense.⁴

Pursuant to exclusion A.1, Travelers reserves the right to deny coverage for Loss for any Claim for any damage to, destruction of, loss of, or loss of use of, any tangible property.

Pursuant to exclusion A.2, Travelers reserves the right to deny coverage for Loss for any Claim for any bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, humiliation, or loss of reputation of any person.

Pursuant to exclusion A.3, Travelers reserves the right to deny coverage for Loss for any Claim based upon or arising out of i) the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of any Pollutant; and/or ii) any request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any Pollutant.

Pursuant to exclusion A.14, Travelers reserves the right to deny coverage for Loss for any Claim based upon or arising out of the liability of others assumed by an Insured under any contract or

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

³ The MPL Coverage Part defines Personal Injury as follows:

Personal Injury means:

- 1. false arrest, detention, or imprisonment, or malicious prosecution;
- 2. the publication or utterance of libel, slander, or other defamatory or disparaging material;
- 3. invasion, infringement, or interference with the rights of privacy;
- 4. wrongful entry or eviction; or
- 5. invasion of the right of private occupancy.

⁴ As amended by endorsement MPL-7112 Ed. 01-09.

***** Our toll-free number is 800-842-8496 *****

If possible, please send future communications and documents concerning this claim via email to JWARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).

Travelers

July 8, 2021

Page 6

agreement, whether oral or written, except to the extent that the Insured would have been liable in the absence of such contract or agreement.

Pursuant to exclusion A.15, Travelers reserves the right to deny coverage for Loss for any Claim based upon or arising out of any Personal Injury.

The Policy also includes the following endorsement, which provides in relevant part:

WARRANTY OR GUARANTEE EXCLUSION ENDORSEMENT

This endorsement modifies the following:

Miscellaneous Professional Liability

It is agreed that:

The following is added to section III. EXCLUSIONS, A. EXCLUSIONS APPLICABLE TO ALL LOSS:

The Company will not be liable for Loss for any Claim based upon or arising out of any warranty or guarantee by an Insured.

Pursuant to this endorsement, Travelers reserves the right to deny coverage for Loss for any Claim based upon or arising out of any warranty or guarantee by an Insured.

The Policy also includes the following provision:

OTHER INSURANCE

This Liability Coverage applies as excess insurance over, and will not contribute with any other valid and collectible insurance available to the Insured, including any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this Liability Coverage by reference in such other policy to the Policy Number of this Liability Policy. This Liability Coverage will not be subject to the terms of any other insurance.

Travelers understands that Liberty Mutual, Ingenero's commercial general liability insurance carrier, is also affording a defense to Ingenero. Travelers reserves the right to assert that the coverage afforded the Policy is excess of any other applicable insurance, including the coverage being afforded by Liberty Mutual. Please place all other carriers who may afford coverage on notice of this matter, and please provide me with their coverage letters.

The Policy also includes the following applicable provision:⁵

F. INSURED'S DUTIES IN THE EVENT OF A CLAIM

⁵ As provided via endorsement LIA-19089 Ed. 04-14.

Travelers

July 8, 2021

Page 7

The Insured agrees not to voluntarily settle any Claim, make any settlement offer, assume or admit any liability or, except at the Insured's own cost, voluntarily make any payment, pay or incur any Defense Expenses, or assume any obligation or incur any other expense, without the Company's prior written consent, such consent not to be unreasonably withheld. The Company is not liable for any settlement, Defense Expenses, assumed obligation or admission to which it has not consented.

In accordance with this Policy provision, Travelers will not be liable for any Loss, including Defense Expenses, admitted, incurred, or paid by the Insured without Travelers' prior written consent.

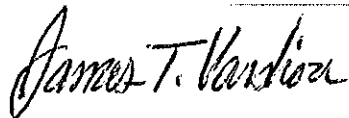
The allegations with respect to this matter suggest that there is the potential that the covered Loss and/or uncovered loss may exceed the Limit of Liability. Therefore, we strongly suggest that you take action as you deem appropriate to ensure that Ingenero's interests are properly protected. Further, we recommend placing any and all other insurance carriers, including excess carriers, who may afford coverage for this matter on notice of this matter so that they may evaluate same for coverage.

Travelers is providing a defense to its Insured in this matter under a full reservation of rights, including but not limited to those stated above. Travelers' duty to defend this Claim may be extinguished at some point in the future if it can be determined conclusively that no coverage exists for this matter under the Policy. Also, Travelers reserves the right to seek reimbursement to the extent permitted by law for costs incurred to defend this matter, if it is conclusively determined that no coverage is available under the Policy.

Neither this letter nor any actions by Travelers or any of its agents shall constitute or be deemed to be, a waiver, estoppel, admission of liability or prejudice of any kind to its rights and defenses under the Policy, by law, or otherwise.

Please do not hesitate to contact me if you have any questions or comments regarding this preliminary coverage evaluation.

Sincerely,



James Vardion

cc: John DiBiasi (Via email only: John.DiBiasi@epicbrokers.com)
EDGEWOOD PARTNERS INS

***** Our toll-free number is 800-842-8496 *****

If possible, please send future communications and documents concerning this claim via email to JWARDION@travelers.com Please include the claim number in the subject line. (Please note that in certain cases we may still request original documents).